IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1261 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROYAL TRADING COMPANY

Versus

NIRMA CONSUMER CARE LIMITED

Appearance:

1. Civil Revision Application No. 1261 of 2002

MR DC DAVE for Petitioner No. 1-5

MR MB GANDHI for Respondent No. 1

MRS TRUSHA M GANDHI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/12/2002

ORAL JUDGEMENT

#. Rule. Mr.Gandhi waives service of rule for the

respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioners herein are the original defendants of Summary Civil Suit No.5857 of 2000. The said suit is filed by the respondent herein for recovery of Rs.21,49,539=17 ps. with running interest. The said suit was filed as Summary Suit under Order 13 of the Civil Procedure Code. It seems that, since the advocate of the defendants did not appear in the said suit, ex parte decree was passed on 11.7.2002. The present petitioners came to know about the aforesaid ex parte decree on 21.8.2002 when some inquiry was made in connection with the suit. Thereafter, an application was submitted for setting aside the said decree under Order 34, Rule 4 of the Civil Procedure Code. The trial Court, however, rejected the said application on the ground that, there are no sufficient grounds and no special reasons are shown by the defendants for setting aside ex parte decree. The trial Court, accordingly, rejected the said application by its order dated 22.11.2002, against which the present revision application has been filed by the original defendants of the said suit.

#. At the time of hearing of this revision application, learned advocates of both the sides stated that, it is not necessary to give reasons for setting aside the impugned order. Mr.Gandhi, however, submitted that the defendants may be directed to pay some amount in favour of the original plaintiff. In view of the consensus arrived at between the parties, reasons in disposing of this revision application are not given. The impugned order passed by the trial Court in Restoration Application No.494 of 2002 is quashed and set aside. Summary Suit No.5857 of 2000 is restored on the file of the learned City Civil Judge, Ahmedabad. The petitioners are directed to pay Rs.3,00,000/- to the original plaintiff by way of Demand Draft directly, for which, the plaintiff shall give appropriate receipt on receiving such amount, on or before 31.1.2003. It is clarified that, ultimately, if any decree is passed in favour of the plaintiff, naturally, the said amount is required to be adjusted towards the decreetal amount. The petitioners herein will submit their leave to defend application on or before 15.2.2003. Before taking the said application for hearing, the trial Court shall ensure that the amount in question is paid by the petitioners, as indicated above, and thereafter the trial Court will proceed with the suit from the stage of leave to defend and shall dispose of leave to defend application on its own merits and in accordance with law.

#. This revision application is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)